

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 95-26**

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

Application of the sales and use tax to storage and shipment of printed materials from a shipping point/warehouse located in Tennessee.

SCOPE

Revenue rulings are statements regarding the substantive application of law and statements of procedures that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

FACTS

Company A has a manufacturing plant located in an adjoining state where it prepares, prints and binds magazines, catalogs and print inserts that are distributed nationally and internationally. Company A produces products specifically for its customers who either resell the products or use them to market to their customers. In essence, every product (magazine, catalog, newspaper insert, etc.) is unique based upon customer specifications.

The specifications for each individual issue of a magazine, catalog or insert are contracted (either orally or in writing) with every customer. Product specifications include items such as paper stock, trim size, page count, print order, delivery date, and other terms and conditions. One of the items included in the terms and conditions of each sale is transportation of the product.

Company A is proposing to contract with an independent carrier to transport the product from the manufacturing plant to a pooled shipping point/warehouse located in Tennessee. Company A will retain title to the product and incur all costs associated with the shipment of the product to the warehouse. A broker will then be engaged, either by

Company A or directly with the customer, to coordinate the shipment of goods from the pooled shipping point/warehouse to the ultimate destination. This arrangement is being contemplated in order to obtain shipping cost efficiencies by pooling various companies' shipments. It is stipulated for the purpose of this ruling that Company A will have nexus with Tennessee for sales and use tax purposes.

ISSUE

Whether Company A will be subject to Tennessee sales or use tax on magazines, catalogs and inserts shipped into Tennessee, temporarily stored here, and then shipped to destinations outside the state.

RULING

Magazines, catalogs and inserts which are imported into Tennessee, stored here, and subsequently exported from Tennessee without being sold or otherwise used in Tennessee will not be subject to Tennessee sales and use tax.

ANALYSIS

T.C.A. § 67-6-202 provides that “[f]or the exercise of the privilege of engaging in the business of selling tangible personal property at retail in this state, a tax is levied at the rate of six percent (6%) of the sales price of each item or article of tangible personal property when sold at retail in this state.” A “sale” is defined by T.C.A. § 67-6-102(24) as meaning “any transfer of title or possession, or both, exchange, barter, lease or rental, conditional, or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration.”

T.C.A. § 67-6-203 provides a tax “at the rate of six percent (6%) of the cost price of each item or article of tangible personal property when the same is not sold but is used, consumed, distributed, or stored for use or consumption in this state; provided, that there shall be no duplication of the tax.”

T.C.A. § 67-6-313(a) provides that “it is not the intention of this chapter to levy a tax upon articles of tangible personal property imported into this state or produced or manufactured in this state for export.” In the case of *Beecham Labs. v. Woods*, 569 S.W.2d 456 (Tenn. 1978) this provision was construed to create a use tax exemption for pharmaceutical samples imported into Tennessee, stored at the plaintiff’s warehouse within the state, and from there distributed to destinations outside Tennessee.

This import-for-export exemption from sales tax does not apply when tangible personal property is transferred from a vendor located in Tennessee to a purchaser also located in Tennessee even though the purchaser intends to and does export the merchandise. *Jack Daniel Distillery v. Jackson*, 740 S.W.2d 413 (Tenn. 1987).

Under the decision in *Nasco, Inc. v. Jackson*, 748 S.W.2d 193 (Tenn. 1988), the import for export exemption does not apply to materials used in Tennessee to fabricate items for use outside Tennessee.

Therefore, magazines, catalogs and inserts which are imported into Tennessee, stored here, and subsequently exported from Tennessee will not be subject to Tennessee sales and/or use tax, assuming there is no sale to a purchaser in Tennessee and that no use is made of the items in Tennessee other than import, storage, and export.

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